STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

APPEAL NO. 07F-00386

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
DISTRICT: 04 Duval
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 5, 2007 at 1:15 p.m., in Jacksonville, Florida. The petitioner was not present. However, he was represented by / , case worker and legal guardian. Appearing as witnesses for the petitioner were , foster mother and caseworker. The agency was represented by Cindy Barge, Agency for Healthcare Administration (AHCA). Appearing as witnesses for the agency were Teresa Ashey, Kepro and Dr. Robert Buzzeo, Kepro. Ms. Ashey and Dr. Buzzeo participated in the hearing by telephone. George Smith, Kepro, was a telephonic observer.

ISSUE

The petitioner disagrees with the agency's action of January 5, 2007 to approve 8 hours a day or 480 hours of private duty nursing instead of the requested 720 hours. The agency has the burden of proof.

FINDINGS OF FACT

The petitioner is a 7 year old male with a diagnosis of other specified congenital anomalies of the brain, tracheostomy, epilepsy, and insomnia unspecified. On December 28, 2006, 720 hours or 12 hours daily of private duty nursing services was requested by the nursing service provider. The Kepro Unit evaluated the request to determine if medical necessity existed to approve the service at the requested level. The Kepro Unit's review states in part:

> "Initial PC Review:
> On 1/02/07 at 12:58pm, A Board Certified Pediatrician reviewed the case and made the following determination:
> 7 year old with unspecified congenital brain anomalies. Nursing assistance required for trach, O2, GT, meds. Patient lives in medical foster care. APPROVE RN: 720 hours 12/29/2006-02/26/2007, 12 hours at night Sun-Sat 7pm-7am. Upon return of the case to RNR it was noted that the PC had deviated from the current AHCA policy and provided no clarification regarding that deviation from AHCA policy. The RNR referred the case to a KePRO Medical Director who is a Board Certified Pediatrician for clarification. On 01/02/07 a 10:58 pm the Medical Director May the following determination: "7 year old with unspecified congenital brain anomalies. Nursing assistance required for trach, O2, GT, meds. Patient lives with medical foster care. Reviewed comments by first physician reviewer, which are not consistent with AHCA policy for patients cared for in a MFA home. Current policy states only 8 hours allowance for PDN in the MFC environment to be utilized at night only one of the MFC provider sleeps. I suggest that the AUTHORIZATION for PDN services be APPORVED for 8 hours only of PDN services, 7 days/week for the 60 cert period (12/29/2006-02/26/2006). This would be a total of 480 hours, therefore, 240 hours should be DENIED." The provider was notified of this decision on 01/03/07 at 10:34 am and provided with information regarding the option of requesting a Reconsideration review.

> RECONSIDERATION: On 1/03/07 at 7:30 am, a Reconsideration review was completed by a second Physician Consultant who is Board-Certified in Pediatrics and resulted in the following determination. "I have read the reconsideration request from provider dated 1/03/07. There is no further information that was submitted to support additional PDN services other than the 8 hours/day, 7 days/week for a total of 480 hours for the stated cert period of 12/29/06 to 02/26/07. DENIAL of four (4) hours/day, 7 days/week or a total of 240 hours is UPHELD."

The Kepro Unit determined that based on information provided the petitioner was eligible for 480 hours of private duty nursing or 8 hours a day instead of the requested 720 hours. The agency substantiated its decision by referring to policy that restricts the number of private duty nursing service hours to a maximum of 8 hours per day for a foster care residence. The petitioner was notified of the agency's decision on January 3, 2007. A reconsideration was performed and the original decision was upheld with notification being provided on January 4, 2007. The petitioner requested a Re-Reconsideration and the denial decision was again upheld.

The petitioner's condition is medically complex. He requires frequent suctioning and trachea care and replacement to clear obstructions for oxygenation. He is nonverbal, incontinent, and visually impaired. The petitioner requires total care for all aspects of bathing, dressing, toileting, grooming, and hygiene. The petitioner must be repositioned frequently to maintain skin integrity and pulmonary hygiene. The petitioner receives all medications through a gastric tube and must be monitored closely for reflux and aspiration. The petitioner must also be monitored for seizures. The petitioner lives in a medically needy foster home with his foster mother, her husband and four other children.

The foster mother requested the additional nursing care so that she can attend to the other children, so she can get additional sleep and so she can attend to her own hygiene needs. The petitioner's foster mother reported that she typically goes to bed at 11:30 pm and she awakes at 6:00 am which only gives her 61/2 hours of sleep a night. The agency representative explained that there is no exception to the 8 hour maximum on private duty nursing services in a foster care situation and she explained that the service cannot be approved for the convenience of the provider or recipient.

The agency representative referred to an AHCA memo dated June 8, 2006 as justification for the 8 hour limit of private duty nursing services. This memo indicated private duty nursing services can only be provided to a medical foster home at night to provide continuous or frequent intervention.

CONCLUSIONS OF LAW

Pursuant to the Florida Administrative Code at 59G-1.010 **Definitions**, which states in part:

> "(166) 'Medically necessary' or 'medical necessity' means that the medical or allied care, goods, or services furnished or ordered must:
> (a) Meet the following conditions:
> 1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
> 2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
> 3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
> 4. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available; statewide; and
> 5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(b) 'Medically necessary' or 'medical necessity' for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.
(c) The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service."

Fla. Stat. § 409-905, states in part:

"(4) (b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services, an individualized treatment plan that includes information about medication and treatment orders, treatment goals, methods of care to be used, and plans for care coordination by nurses and other health professionals. The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents. When implemented, the private duty nursing utilization management program shall replace the current authorization program used by the Agency for Health Care Administration and the Children's Medical Services program of the Department of Health. The agency may competitively bid on a contract to select a qualified organization to provide utilization management of private duty nursing services. The agency is authorized to seek federal waivers to implement this initiative."

The Home Health Services Coverage and Limitations Handbook dated October 2003 states in part:

"**Private Duty Nursing Definition**
Private duty nursing services are medically necessary skilled nursing services that may be provided in a child's home or other authorized settings to support the care required by the child's complex medical condition. Who **Can Receive Private Duty Nursing** Medicaid reimburse private duty nursing services for recipients under the age of 21 who:
Have a complex medical problems; and
Require more individual care than can be provided through a home health nurse visit...**Parental Responsibility** Private duty nursing services are authorized to supplement care provided by parents and caregivers.

> Parents and caregivers must participate in providing care to the fullest extent possible. Training can be offered to parents and caregivers to enable them to provide care they can safely render. Medicaid does not reimburse private duty nursing services provided solely for the convenience of the child, the parents or the caregiver. "

The record shows that the petitioner requested to be approved to receive 720 or 12 hours daily of private duty nursing service. The agency referred the case to the Kepro Unit for a prior authorization evaluation. The Kepro unit evaluated the information provided and determined that the petitioner should be approved for 480 or 8 hours daily of private duty nursing services because AHCA policy restricts private duty nursing services to 8 hours a night in a medical foster care home while the medical foster care provider sleeps. The agency's determination was also based on the medical necessity criteria and the description of private duty nursing service found in the Coverage and Limitations handbook. The agency representative referred to provider qualification and enrollment information which requires that a Medicaid Medical Foster Care Provider be available 24 hours a day to provide services and that a Medicaid Medical Foster Care Provider notify staff when unable to provide services for a child in their care.

The petitioner's mother disagreed with the agency's decision and argued that 8 hours of private duty nursing is insufficient because it does not leave her enough time to take of her personal needs, get 8 hours sleep, and properly take care of other children.

In carefully comparing the evidence presented to the applicable authorities, the hearing officer concludes that the agency's action to approve 8 hours daily of private duty nursing service instead of the requested 12 hours daily is a justified action that is in accordance with the above cited authorities.

DECISION

This appeal is denied.

NOTICE OF RIGHT TOAPPEAL

This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 16th day of April, 2007,

in Tallahassee, Florida.

James Abdur-Rahman

James Abdur-Rahman
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

APPEAL NO. 06F-00973

PETITIONER,

Vs.

CASE NO. 1210800136

FLORIDA DEPT OF CHILDREN AND FAMILIES
DISTRICT: 11 Dade
UNIT: 88125

RESPONDENT.
_____/

ORDER OF STIPULATION

This matter having come before me on the stipulation entered herein, by and between the parties, a copy of which is attached hereto and incorporated herein by reference. It is hereby ordered that the stipulation is approved and adopted, as the order of the undersigned-hearing officer.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

PETITIONER,

vs.

FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES
DISTRICT: 11 Dade
UNIT: 88125

RESPONDENT.

APPEAL NO. 06F-00973

CASE NO. 1210800136

STIPULATION

Petitioner, ("Petitioner") and Respondent, FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES ("DEPARTMENT"), by and through their respective undersigned Counsel, hereby enter into the following Stipulation in settlement of the above captioned proceeding:

1. Petitioner hereby stipulates that on November 5, 2004, he was placed in a nursing home under the Institutional Care Program (ICP).

2. On Petitioner's initial application for benefits dated December 3, 2004, his designated representative s declared SSA income, no assets and no closed bank account in the last 3 years.

3. Petitioner's benefits for the MIM / ICP program were approved from November 2004 to December 2005.

4. During Petitioner's January 2006 redetermination for benefits, it was discovered that in September 2004, Petitioner possessed $44,452.58 in his Suntrust Bank Account No. 4 and $10,351.25 in his Suntrust Bank Account No.

5. Petitioner stipulates that for Medicaid purposes his assets in September 2004, were $54,803.83 and that those assets were transferred by his designated representative , to his son, in September 2004.

6. Petitioner stipulates that the transfer of the assets took place during the applicable Medicaid look back period of thirty-six (36) months and that he is therefore ineligible to receive Medicaid benefits for sixteen (16) months, ie. until January 2006.

7. Petitioner further stipulates that the sixteen (16) month period was reached as follows: As the transfer was made prior to June 1, 2006, the private pay nursing home rate of $3,300 is used as a divisor of the total asset amount of $54,803.83, resulting in a sixteen (16) month ineligibility period beginning the month the transfers occurred, which would be September 2004 through December 2005.

8. The Department therefore stipulates that Petitioner is entitled to receive MIM / ICP benefits commencing January 2006 and shall process Petitioner's benefits accordingly.

9. The Hearing Officer in the above referenced action is hereby authorized by the parties to file a Notice of Dismissal With Prejudice.

10. The parties have agreed to bear their own respective attorney fees and costs in this action.

11. The undersigned hereby represent that they have the authority to enter into this Stipulation according to the terms as stated in the foregoing.

DATED this 5th day of April, 2007.

By: _____
MARK LAWRENCE, ESQ.
Attorney for Petitioner
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By: _____
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Miami, FL 33128
Telephone: (305)377-5080
Facsimile: (305) 377-5975

DONE and ORDERED this 16th day of April, 2007,

in Tallahassee, Florida.

Alfredo Fernandez

Alfredo Fernandez
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

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STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

APPEAL NO. 06F-07647

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
DISTRICT: 23 Hillsborough
UNIT:

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on February 21, 2007, at 2:42 p.m., in Tampa, Florida. The petitioner was present to testify and represented herself. Ron Basalke, senior human services program specialist with the Agency For Health Care Administration (AHCA), represented the respondent and also testified. Kevin Murdy, manager with MMG Transportation, appeared as a witness for the respondent.

ISSUE

At issue is the respondent's decision of November 21, 2006 to deny the petitioner transportation services based on the allegation by the transportation provider, MMG Transportation, that the petitioner exhibited uncooperative behavior. The petitioner is seeking continued bus transportation services.

FINDINGS OF FACT

The respondent, through the transportation provider MMG transportation, sent notice to the petitioner in November 2006 that her bus transportation privileges were terminated based on the assertion that the petitioner had exhibited uncooperative behavior. The petitioner received this notice on November 21, 2006. The petitioner disputes the merit of this allegation. However, the merit of this allegation was not sufficiently developed to render a factual finding on such.

The transportation provider, MMG Transportation, stipulated at the hearing to continue providing transportation services to the petitioner, and agreed to rescind the prior denial action. The petitioner surfaced a second issue during the hearing regarding a later alleged refusal of MMG Transportation to provide transportation to a specific oncologist. Since this instant appeal was requested on November 29, 2006 and this second surfaced issue did not arise until January 2007, it is not part of this instant appeal. The petitioner elected to first seek resolution of this second requested issue with MMG Transportation prior to requesting an appeal on this specific matter.

CONCLUSIONS OF LAW

The Findings of Fact show that the respondent agency stipulated to rescind its prior intended termination of transportation services, and agreed to continue to provide transportation services to the petitioner. This hearing authority's jurisdiction is limited to specific benefit matters, as set forth in Florida Administrative Code Rule 65-2.056, as below:

65-2.056. Basis of Hearings.
The Hearing shall include consideration of:
(1) Any Agency action, or failure to act with reasonable promptness, on a claim of Financial Assistance, Social Services, Medical Assistance, or Food Stamp Program Benefits, which includes delay in reaching a decision on eligibility or in making a payment, refusal to consider a request for or undue delay in making an adjustment in payment, and discontinuance, termination or reduction of such assistance.
(2) Agency's decision regarding eligibility for Financial Assistance, Social Services, Medical Assistance or Food Stamp Program Benefits in both initial and subsequent determination, the amount of Financial or Medical Assistance or a change in payments.
(3) The Hearing Officer shall determine whether the action by the agency was correct at the time the action was taken.

This hearing authority's jurisdiction does not include the respondent agency's administration of the program per se, except as such pertains to the provision of a specific benefit determination. Findings show that the Department has agreed to continue to provide the transportation services benefit that had been previously denied. Since the respondent has stipulated to continue the transportation benefits previously terminated, and this hearing authority's jurisdiction is limited to benefit issues as above, this appeal is denied or dismissed as moot.

DECISION

This appeal is denied as moot in view of the fact that the respondent has stipulated to continue the transportation services provided by MMG Transportation.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin

the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 2 day of April, 2007,

in Tallahassee, Florida.

Jim Travis
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

APPEAL NO. 06F-06761

PETITIONER,

Vs.

CASE NO. 1224137426

FLORIDA DEPT OF CHILDREN AND FAMILIES
DISTRICT: 11 Dade
UNIT: 88601

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on January 31, 2007, at 2:30 p.m., in Opa Locka, Florida. The petitioner was not present but was represented by . Esquire. The Department was represented by Vincent Dunn, district legal counsel. Cathy Mugarra, economic self-sufficiency specialist II, appeared as a witness for the Department. This hearing was previously scheduled for November 22, 2006 and December 22, 2006, but was continued at the respondent's request. The record was initially left open for 15 days for the respondent to submit additional information. On February 13, 2007, a letter was received from Sandra Piligian, deputy district legal counsel, requesting a 21 day extension of time to prepare a letter brief. The petitioner was in agreement and also requested the same extension of time to file his letter brief. Even though the petitioner's closing brief was filed untimely, it will be considered by the hearing officer, as it sets forth his argument in the case. On February 13, 2007, the undersigned hearing officer received from the

petitioner a "Motion to Continue the Benefits" based on the contention that the hearing was requested within the ten days specified for the continuance of the benefits. Ruling on this motion will be explained in the Conclusions of Law.

ISSUE

The petitioner is appealing the Department's action of September 26, 2006, to terminate her Institutional Care Program (ICP) benefits effective October 31, 2006, due to excess income.

FINDINGS OF FACT

On October 9, 2006, the petitioner requested a hearing related to the Department's action of September 26, 2006, to terminate ICP benefits. Prior to the issue under appeal, was in receipt of these benefits. On September 26, 2006, during a review of her case, the Department was made aware that the petitioner had a monthly income, which was not initially reported, in the amount of $1,446.66 from General Electric Capital Assurance Company long term care policy. At that time, had income from the Social Security Administration, in the amount of $814 monthly.

The Department's eligibility specialist determined that gross available monthly income of $2,260.66 exceeded the Department's income limit of $1,809 for 2006. As a result, on September 26, 2006, the Department determined that was no longer eligible for ICP and Medicaid benefits. A Notice of Case Action was mailed to on the next date, informing her that her ICP and

Medicaid benefits would stop as of October 31, 2006, on the basis that her income exceeded the Department's eligibility standards.

The petitioner is not disputing the income amount; however, the petitioner's position is that the money that is being paid under the long term care policy should be excluded in the ICP eligibility and payment process because this income is not listed in any regulation.

CONCLUSIONS OF LAW

Applicable authorities in this matter appear in 20 C.F.R. 416 as follows:

§ 416.1102 What is income?
Income is anything you receive in cash or in kind that you can use to meet your needs for food and shelter. Sometimes income also includes more or less than you actually receive (see § 416.1110 and § 416.1123(b)). In-kind income is not cash, but is actually food or shelter, or something you can use to get one of these.

§ 416.1103 What is not income?
Some things you receive are not income because you cannot use them as food or shelter, or use them to obtain food or shelter. In addition, what you receive from the sale or exchange of your own property is not income; it remains a resource. The following are some items that are not income:..
(5) Cash provided by any nongovernmental medical care or medical services program or under a health insurance policy (except cash to cover food or shelter) if the cash is either:
(i) Repayment for program-approved services you have already paid for; or
(ii) A payment restricted to the future purchase of a program-approved service.
Example: If you have paid for prescription drugs and get the money back from your health insurance, the money is not income.

§ 416.1104 Income we count.
We have described generally what income is and is not for SSI purposes (§ 416.1103). There are different types of income, earned and unearned, and we have rules for counting each. The earned income rules are described in § § 416.1110 through 416.1112 and the unearned income rules are described in § § 416.1120 through 416.1124. One type of unearned income is in-kind support and maintenance (food or shelter). The way we value it

depends on your living arrangement. These rules are described in § § 416.1130 through 416.1148 of this part. In some situations we must consider the income of certain people with whom you live as available to you and part of your income. These rules are described in § § 416.1160 through 416.1169. We use all of these rules to determine the amount of your countable income--the amount that is left after we subtract what is not income or is not counted.

§ 416.1120 What is unearned income.
Unearned income is all income that is not earned income. We describe some of the types of unearned income in § 416.1121. We consider all of these items as unearned income, whether you receive them in cash or in kind.

§ 416.1121 Types of unearned income.

Some types of unearned income are--
(a) Annuities, pensions, and other periodic payments. This unearned income is usually related to prior work or service. It includes, for example, private pensions, social security benefits, disability benefits, veterans benefits, worker's compensation, railroad retirement annuities and unemployment insurance benefits.

§ 416.1124 Unearned income we do not count.

(a) General. While we must know the source and amount of all of your unearned income for SSI, we do not count all of it to determine your eligibility and benefit amount. We first exclude income as authorized by other Federal laws (see paragraph (b) of this section). Then we apply the other exclusions in the order listed in paragraph (c) of this section to the rest of your unearned income in the month. We never reduce your unearned income below zero or apply any unused unearned income exclusion to earned income except for the $20 general exclusion described in paragraph (c)(12) of this section.
(b) Other Federal laws. Some Federal laws other than the Social Security Act provide that we cannot count some of your unearned income for SSI purposes. We list the laws and the exclusions in the appendix to this subpart which we update periodically.
(c) Other unearned income we do not count. We do not count as unearned income--
(1) Any public agency's refund of taxes on real property or food;
(2) Assistance based on need which is wholly funded by a State or one of its political subdivisions. (For purposes of this rule, an Indian tribe is considered a political subdivision of a State.) Assistance is based on need

when it is provided under a program which uses the amount of your income as one factor to determine your eligibility. Assistance based on need includes State supplementation of Federal SSI benefits as defined in subpart T of this part but does not include payments under a Federal/State grant program such as Temporary Assistance for Needy Families under title IV-A of the Social Security Act;
(3) Any portion of a grant, scholarship, fellowship, or gift used or set aside for paying tuition, fees, or other necessary educational expenses. However, we do count any portion set aside or actually used for food or shelter;
(4) Food which you or your spouse raise if it is consumed by you or your household;
(5) Assistance received under the Disaster Relief and Emergency Assistance Act and assistance provided under any Federal statute because of a catastrophe which the President of the United States declares to be a major disaster. See § 416.1150 for a more detailed discussion of this assistance, particularly the treatment of in-kind support and maintenance received as the result of a major disaster;
(6) The first $60 of unearned income received in a calendar quarter if you receive it infrequently or irregularly. We consider income to be received infrequently if you receive it only once during a calendar quarter from a single source and you did not receive it in the month immediately preceding that month or in the month immediately subsequent to that month. We consider income to be received irregularly if you cannot reasonably expect to receive it.
(7) Alaska Longevity Bonus payments made to an individual who is a resident of Alaska and who, prior to October 1, 1985: met the 25-year residency requirement for receipt of such payments in effect prior to January 1, 1983; and was eligible for SSI;
(8) Payments for providing foster care to an ineligible child who was placed in your home by a public or private nonprofit child placement or child care agency;
(9) Any interest earned on excluded burial funds and any appreciation in the value of an excluded burial arrangement which are left to accumulate and become a part of the separate burial fund. (See § 416.1231 for an explanation of the exclusion of burial assets.) This exclusion from income applies to interest earned on burial funds or appreciation in the value of excluded burial arrangements which occur beginning November 1, 1982, or the date you first become eligible for SSI benefits, if later;
(10) Certain support and maintenance assistance as described in § 416.1157;
(11) One-third of support payments made to or for you by an absent parent if you are a child;
(12) The first $20 of any unearned income in a month other than income in the form of in-kind support and maintenance received in the household of

another (see § 416.1131) and income based on need. Income based on need is a benefit that uses financial need as measured by your income as a factor to determine your eligibility. The $20 exclusion does not apply to a benefit based on need that is totally or partially funded by the Federal government or by a nongovernmental agency. However, assistance which is based on need and funded wholly by a State or one of its political subdivisions is excluded totally from income as described in § 416.1124(c)(2). If you have less than $20 of unearned income in a month and you have earned income in that month, we will use the rest of the $20 exclusion to reduce the amount of your countable earned income;
(13) Any unearned income you receive and use to fulfill an approved plan to achieve self-support if you are blind or disabled and under age 65 or blind or disabled and received SSI as a blind or disabled person for the month before you reached age 65. See § § 416.1180 through 416.1182 for an explanation of plans to achieve self-support and for the rules on when this exclusion applies;
(14) The value of any assistance paid with respect to a dwelling unit under--
(i) The United States Housing Act of 1937;
(ii) The National Housing Act;
(iii) Section 101 of the Housing and Urban Development Act of 1965;
(iv) Title V of the Housing Act of 1949; or
(v) Section 202(h) of the Housing Act of 1959.
(15) Any interest accrued on and left to accumulate as part of the value of an excluded burial space purchase agreement. This exclusion from income applies to interest accrued on or after April 1, 1990;
(16) The value of any commercial transportation ticket, for travel by you or your spouse among the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands, which is received as a gift by you or your spouse and is not converted to cash. If such a ticket is converted to cash, the cash you receive is income in the month you receive the cash;
(17) Payments received by you from a fund established by a State to aid victims of crime;
(18) Relocation assistance provided you by a State or local government that is comparable to assistance provided under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 that is subject to the treatment required by section 216 of that Act;
(19) Hostile fire pay received from one of the uniformed services pursuant to 37 U.S.C. 310;
(20) Interest or other earnings on a dedicated account which is excluded from resources. (See § 416.1247);
(21) Gifts from an organization as described in section 501(c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of such Code, to, or for the benefit of, an individual who has not

> attained 18 years of age and who has a life-threatening condition. We will exclude any in-kind gift that is not converted to cash and cash gifts to the extent that the total gifts excluded pursuant to this paragraph do not exceed $2000 in any calendar year. In-kind gifts converted to cash are considered under income counting rules in the month of conversion; and
> (22) Interest and dividend income from a countable resource or from a resource excluded under a Federal statute other than section 1613(a) of the Social Security Act."

Fla. Admin. Code 65-2.048 Action to Reduce or Discontinue Assistance or Service in part states:

> (1) In all programs other than the Food Stamp Program a hearing request filed within ten (10) days after the date of mailing or hand delivery of the notice either orally or written, requires that assistance be continued at the current level until the final written decision of the Hearings Officer is rendered...

The Findings of Fact shows that the petitioner did not file a hearing request within the ten days allowed for the benefits to be continued at the prior level. Therefore, based on the above cited authority, the hearing officer denies the petitioner's "Motion to Continue the Benefits".

The petitioner has argued that the payments made to the petitioner from the General Electric Capital Assurance Company Long Term Care Policy should be excluded in the ICP eligibility and payment process. The petitioner relies on the language in 20 C.F.R. s. 416.1221(a) arguing that the income is not "related to prior work or service", and therefore, fails the test of income that should be include. However, the listing of income in s. 416.1221 is not an all inclusive list of income. The section begins "Some types of unearned income are--"

This order includes a more comprehensive listing from the regulations. Section 416.1102 What is income, starts by stating that "Income is anything you receive in cash or in kind that you can use to meet your needs for food and shelter." The petitioner can use this payment to meet her needs. Section 416.1103 What is not income, excludes certain items from being considered as income. There is only one of the list exclusions that requires review. It is:

> (5) Cash provided by any nongovernmental medical care or medical services program or under a health insurance policy (except cash to cover food or shelter) if the cash is either:
> (i) Repayment for program-approved services you have already paid for; or
> (ii) A payment restricted to the future purchase of a program-approved service.
> Example: If you have paid for prescription drugs and get the money back from your health insurance, the money is not income.

There was no evidence to show that the payment from the long term care policy was a reimbursement for expense. In fact, the petitioner is seeking to have Medicaid pay the expense.

None of the other regulations provide an exclusion for the income from the long term care policy. Additionally, the Department has sent out statewide instructions clarifying how these policies are to be considered under the federal regulations and state rule which is consistent with those authorities. The hearing officer concluded that the Department correctly included these payments in determining the petitioner's eligibility for Medicaid ICP benefits and properly terminated her benefits.

DECISION

The appeal is denied. The Department's action is affirmed.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 3rd day of April, 2007,

in Tallahassee, Florida.

Alfredo Fernandez

Alfredo Fernandez
Hearing Officer
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Copies Furnished T